



ANGUS S. KING, JR.
GOVERNOR

STATE OF MAINE
DEPARTMENT OF
MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

GEORGE D. LAPOINTE
COMMISSIONER

May 31, 2001

Donna Wieting
Chief, Marine Mammal Conservation Division
Office of Protected Resources
National Marine Fisheries Service (NMFS)
1315 East - West Highway
Silver Springs, Maryland 20910-3226

RE: Proposed rule; SURTASS LFA

Dear Dr. Wieting:

The Maine Department of Marine Resources (DMR) wishes to express its concern related to potential adverse impacts from the Navy's proposed SURTASS LFA Sonar deployment in the Gulf of Maine, particularly in regard to effects this proposed system might have on the northern right whale (*Eubalaena glacialis*), a federally listed endangered species. These comments reflect DMR's review and consideration of information that has come to its attention subsequent to its review of the Navy's DOEIS/DEIS.

We believe that special consideration should be given to minimizing potential adverse impacts from the operation of the Navy's SURTASS LFA in those areas that have been identified as critically important seasonal feeding areas for the right whale within the Gulf of Maine: Cape Cod Bay, Great South Channel, Bay of Fundy, and the Brown's Bank area. It should be noted that while female northern right whales migrate to calving areas off the coast of northern Florida and Georgia in the winter, males continue to inhabit Gulf of Maine waters year around. Marine mammalogists indicate that the frequency, period and duration of proposed sonar transmissions are similar in nature to that of the female right whale courtship call. The Navy's OEIS/EIS does not include observations of northern right whale behavior in areas of SURTASS LFA operation.

Potential adverse impacts to northern right whales could be minimized, we believe, by avoiding at appropriate times of year the introduction of intense low frequency sound from SURTASS LFA in those areas that are known to be critical seasonal feeding habitat. Additional potential adverse impacts could be further reduced by ensuring proper training and deployment of marine mammal observers on SURTASS LFA vessels and by developing a system of information sharing between the Navy and research organizations (e.g., NMFS, the New England Aquarium, the State of Massachusetts' Center



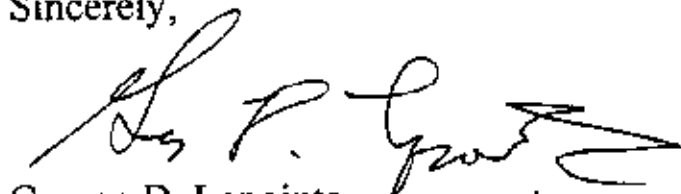
for Coastal Studies) that have seasonal whale migration and real time location data. Monitoring for the affects of this proposed sonar system on right whale behavior, as well as for other marine species, including sea turtles, is critical. DMR urges NMFS to ensure that any rule issued be amended to include these additional protections and to further consult with marine mammal experts in developing additional protections.

DMR is concerned that NMFS' proposed rule governing the issuance of a Letter of Authorization allowing for the incidental taking of marine mammals, including the northern right whale, in connection with the operation of the Navy's SURTASS LFA at a levels up to 180dB along the 200m isobath in the Gulf of Maine may not afford adequate protection for right whales known to frequent areas along this depth contour at certain times of year. A seasonal prohibition/restriction on SURTASS LFA operation in those areas in connection with visual and/or acoustic monitoring for marine mammals would be more protective.

DMR believes that several other changes to the proposed rule be made to improve and facilitate protection of marine mammals and other marine resources. Section 216.187 of this proposed rule should be amended to provide potentially affected coastal states with timely notice of the Navy's application for an approval letter. Timely notice would provide an opportunity for the State to provide any information pertinent to the NMFS' findings necessary for issuance of the letter and would facilitate communication regarding active diving areas, marine mammal activity and other pertinent issues. In its response to comments¹, NMFS states that "[I]f a state or other organizations [sic] can provide documentation that state waters need additional protection, they can provide the documentation and petition NMFS proposing such restrictions as a mitigation measure." The rule (section 216.191) should be amended to expressly provide for this option, both inside of and outside of state waters. Section 216.191, as drafted, appears to provide for the addition of areas that would be subject to protection under 216.183(d)², but does not expressly provide for "additional protection", (e.g., received levels less than 180db). Section 216.191 should also provide a process for "additional protection" within areas designated under 216.183(e). Section 216.186 of the proposed rule should be amended to require that the Navy provide the report required under the Letter of Authorization to potentially affected coastal states. Sharing of this information may assist the states and others in ongoing monitoring and assessment of impacts from the deployment of the proposed SURTASS LFA.

Thank you for your consideration of these comments.

Sincerely,



George D. Lapointe
Commissioner of DMR

¹ 66 FR 15381, March 19, 2001 (NMFS' response to comment 28)

² Section 216.183(e) appears to provide the list of offshore areas of biological significance subject to the prohibition in section 216.183(d). Use of consistent terminology in sections 216.183(d) and (e) and reference to 216.183(e) in 216.191 would clarify these provisions.

Cc: Joseph S. Johnson, SURTASS LFA Sonar OEIS/EIS Program Manager
Senator Olympia J. Snow
Senator Susan H. Collins
Congressman John E. Baldacci
Congressman Thomas M. Allen
Donald R. Knowles, NMFS
Scott Kraus, New England Aquarium
Todd Burrowes, Maine State Planning Office
Linda Mercer, Terry Stockwell, Brian Swan, DMR